Remarks

Claims 1, 2, 7-11, 14, 15, 17 and 19 are presently pending.

Claims 3-6, 12, 13, 16, 18 and 20-24 have been cancelled.

Claims 1, 7, 10, 11, 17 and 19 are currently amended.

Rejections under §102(e) - Webb

Claims 1, 2, 10, 11, 14 and 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,733,389 to Webb et al. ("Webb" hereinafter). This rejection is respectfully traversed.

Claims 1 and 2, and newly added claims 25 and 26

Claim 1 recites a method comprising, *inter alia*, "initiating, via a gaming device operable to facilitate a wagering game, a game session of indeterminate duration, wherein the game session comprises a plurality of plays of a game and wherein the game session is not defined by either a predetermined number of handle pulls or a predetermined period of time; determining . . . a game variable defining the game session; determining a terminating value associated with the game variable, the terminating value being based on a running count of a number of losing game outcomes during the session; determining a current value of the game variable; and terminating . . . the game session based on the terminating value and the current value."

Webb does not disclose these features, particularly " initiating, via a gaming device operable to facilitate a wagering game, a game session of indeterminate duration, wherein the game session comprises a plurality of plays of a game," or "terminating the game session based on the terminating value and the current value." As discussed in detail in Applicants' previous response, Webb is directed to receiving individual wagers for each individual game, with each single game having a single outcome. The Office Action relies on Col. 2:30-31 of Webb as disclosing a game parameter ("the marker") and on Col. 3:30-31 as disclosing a terminating value ("the termination trigger") with respect to a secondary bonus game, but this bonus game is based solely on the outcomes of the primary games, not on any session as defined by Applicants' claim.

This distinction was explained in detail in Applicants' previous response, but the Office Action ignores this distinction and instead includes an additional cite to Col.

10:35-39 that is deficient for the same reason: the "three strikes" apply to termination of a bonus game, not a game session as defined by the claim. In addition, the Office Action improperly limits the definition of a losing outcome as a "strike" only, ignoring that a running count in Webb of "strikes" only would not be a running count of "losing outcomes" because a number of non-strike losing outcomes would be omitted from the count.

Accordingly, Webb fails to disclose, teach or suggest "receiving a wager for a game session of indeterminate duration" or "terminating the game session based on the terminating value and the current value." That is, there is no teaching in Webb of receiving a single wager for a session that may have more than one game or gaming event.

Claim 2 and newly added claims 25 and 26 depend from claim 1 and is allowable for at least the same reasons. In addition, claim 25 recites that "the number of losing outcomes includes every losing outcome that occurs during the game session," and claim 26 recites that "a losing outcome comprises any outcome that does not result in a payout," neither of which can be met by the Office Action's improper definition of "losing outcome" as "strike" only.

Claim 10

Claim 10 recites a method comprising, *inter alia*, "determining at least one game parameter that is associated with a game; for each at least one game parameter, determining a respective terminating condition that is associated with the game parameter; initiating a flat rate play session of the game; determining if at least one terminating conditions is satisfied; and if at least one terminating conditions is satisfied, terminating the flat rate play session, in which the at least one game parameter corresponds to at least one of: a probability, a probability of a player entering a bonus round, and a rate of expiration of a predetermined game symbol."

Webb does not disclose these features, particularly initiating or terminating "a flat rate play session." Similar to the discussion of the term "session" and "game session" above, the plain meaning of flat rate play session is not consistent with the Office Action's interpretation. In addition, Applicants

have explicitly defined the limitation "flat rate play session" at paragraph 123 of the specification:

> The term "flat rate play session" may refer to a game session that is associated with a flat rate price. For example, a player may be able to play a desired number of handle pulls for a set price. In another example, a player's flat rate play session is not defined by time or by handle pulls, and will not end until some terminating condition has occurred (*e.g.*, the player receives a flush in a video poker game).

The Office Action's interpretation that "the prior art teaches initiating a flat rate play session by depositing the number of credits that will allow the game to start" is a complete misreading of the reference and of Applicants' definition. In Webb, each individual game must be individually paid for, but there is no defined session that is associated with a specific price, particularly when that session is of indefinitely duration. Accordingly, Webb fails to disclose, teach or suggest initiating or terminating "a flat rate play session."

Claims 11, 14 and 15

Claim 11 recites a method comprising, inter alia, "receiving a wager for a game session, the game session including a plurality of handle pulls, wherein the game session is not defined by either a predetermined number of handle pulls or a predetermined period of time; initiating the game session; determining . . . a game parameter that is associated with the game session, the game parameter being based on a number of bonus rounds achieved during the game session; determining . . . a terminating value that is associated with the game parameter; determining a current value of the game parameter; and ending . . . the game session based on the terminating value and the current value."

The Office Action simply regurgitates its previous rejection of claim 11 verbatim, without addressing any of Applicants' arguments or amendments, including the limitation of "the game parameter being based on a number of bonus rounds achieved during the game session."

Further, as discussed in detail in Applicants' previous response and as discussed above in detail with respect to claim 1, Webb does not disclose "receiving a wager for a game session, the game session including a plurality of handle pulls, wherein the game

session is not defined by either a predetermined number of handle pulls or a predetermined period of time."

The Office Action must give claims "their broadest reasonable interpretation consistent with the specification." MPEP 2111, quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). The Office Action appears to be improperly interpreting the limitation "game session" as comprising a single game having a single gaming event, e.g., a handle pull or reel spin. This is inconsistent with the usage of the term "session," both in the body of the claim, and as explicitly defined in the specification.

Applicants respectfully submit that the plain meaning of "game session" implicates a plurality of games, events, stages, etc. To the extent that the Office Action asserts that the broadest reasonable interpretation of the term includes a single game having a single wagering event, Applicants respectfully note that the term is explicitly defined in Applicants' specification at paragraph 122:

> The terms "session," "game session," "gaming session," and "play session" shall be synonymous and may refer to a series of plays, game stages, and / or games. Play during a gaming session may take place at one gaming device, at multiple gaming devices, and / or during a continuous period of time (*e.g.*, in a casino location). As with a game, a gaming session may end voluntarily or involuntarily. The end of a game session, as discussed herein, may be defined, for example, by a number of handle pulls, by a period of time, by the accomplishment of one or more objectives, by the occurrence of a trigger or event, by the satisfaction of one or more conditions, and / or by a game parameter becoming associated with a particular value (e.g., a terminating value). A session might be purchased by means of purchasing a contract from a casino, wherein the contract specifies terms such as, for example, a price to be paid by the purchaser for the contract, a duration of play of a gaming device, and a threshold of credits above which the player may collect winnings from a gaming device. Apparatus and methods which, among other things, permit and enable various ways of providing contract play and game sessions such as prepaid sessions, flat rate play sessions, and which are appropriate for use in accordance with the present invention are disclosed in pending U.S. Patent Application No. 10/001,089, filed November 2, 2001, entitled "GAME MACHINE FOR A FLAT RATE PLAY SESSION AND METHOD OF OPERATING SAME," the entirety of which is incorporated herein by reference for all purposes.

The broadest reasonable interpretation of the "session" limitation still includes a series of events, i.e., even an interpretation in which a session is a single game must still include a series of plays, pulls, stages etc. To the extent the Office Action has established any alternative "plain meaning" for this term, Applicants respectfully submit that "[w]here an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. MPEP 2110.01, quoting *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999). Accordingly, the Office Action is not permitted to redefine the term "game session" to be a single game having a single gaming event or outcome.

Claims 14 and 15 depend from claim 11 and are allowable for at least the same reasons as claim 11.

Rejections under §102(b) - Jaffe

Claims 7-9, 17 and 18 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,551,187 to Jaffe ("Jaffe" hereinafter). This rejection is respectfully traversed.

Claims 7-9

Claim 7 recites a method comprising, *inter alia*, "determining . . . at least one game parameter that is associated with a game; for each at least one game parameter, determining . . . a respective terminating condition that is associated with the game parameter; initiating . . . a flat rate play session of the game; determining . . . if at least one terminating condition is satisfied; and if at least one terminating condition is satisfied, terminating the flat rate play session, in which the at least one game parameter corresponds to a predetermined configuration of a plurality of game elements corresponding to a predetermined game outcome."

Jaffe fails to disclose, teach or suggest these limitations, particularly initiating or terminating a "flat rate play session, in which the at least one game parameter corresponds to a predetermined configuration of a plurality of game elements corresponding to a predetermined game outcome."

The Office Action again simply regurgitates its previous rejection of claim 7 verbatim and does not address any of Applicants' amendments or arguments. The Office Action again alleges that the "streakier" [sic] *bonus* game, a game that occurs *between* individual primary games, transforms an individual primary game into a "flat rate play session." This is not the case, as Applicants have explained in detail in this response and in Applicants' previous response. The Office Action's confusing and internally inconsistent explanation at page 5 merely emphasizes the differences between the bonus game disclosed by Jaffe and the flat rate play session claimed by Applicants.

Claims 8 and 9 depend from claim 7 and are allowable for at least the same reasons as claim 7.

Claim 17

Claim 17 recites, *inter alia*, "receiving . . . a wager for a game session that includes a plurality of outcomes; initiating . . . the game session; generating . . . at least one outcome, in which each outcome includes a plurality of instances selected from a set of slot machine symbols, and the set of slot machine symbols includes a plurality of predetermined slot machine symbols; and terminating . . . the game session based on an occurrence of an outcome that contains a predetermined plurality of instances.

For the same reasons discussed in detail above with respect to Claims 7-9 as well as in Applicants' previous response, Jaffe fails to disclose, teach or suggest these limitations, particularly initiating or terminating a "game session based on an occurrence of an outcome that contains a predetermined plurality of instances."

Rejections under §103(a) – Colin in view of "an ordinary artisan in the art"

Claim 19 stands rejected under 35 U.S.C. 103(a) being unpatentable over U.S. Patent Publication No. 2002/0119813 to Colin et al. ("Colin" hereinafter) in view of "an ordinary artisan in the art." This rejection is respectfully traversed; in fact, Applicants are unaware of any authority that permits the substitution of "an ordinary artisan" in place of a prior art reference in a §103(a) obviousness rejection.

Claim 19 recites a method comprising, inter alia, "determining a game parameter value that is associated with a video poker game; determining a terminating value that is associated with the game parameter value, the terminating value corresponding to a

predetermined video poker hand; receiving a wager for a session of the video poker game, the session including a plurality of hand outcomes, wherein the session is not defined by either a predetermined number of hand outcomes or a predetermined period of time; initiating the session; determining if the game parameter value is equal to the terminating value; and if the game parameter value is equal to the terminating value, terminating the session."

The Office Action admits at page 3 that "[t]he prior art however remains silent towards providing a player a game session or a plurality of hand outcomes to the player for the wager." Therefore, by the Office Action's own admission, Claim 19 is allowable.

The Office Action alleges, without any evidence, that "[o]ne of ordinary skill would view the game offered by Colin as too short therefore would [sic] alter the game to offer several rounds of gameplay for a set wager value to encourage people to play." This statement is legally deficient and factually unsupported.

First, all parties agree that the prior art fails to disclose a specific feature of a claim. The Office Action admits that "the prior art" fails to disclose a game session as claimed, a tacit concession that "an ordinary artisan in the art" is not prior art. Therefore, whether an ordinary artisan would or would not have been motivated to modify a reference is irrelevant if that modification was not in the prior art as the Office Action admits.

Second, the statement, even if true, does not meet all the limitations of the claim. The Office Action alleges that an ordinary artisan would "alter the game to offer several rounds of gameplay for a set wager value," but as discussed at length throughout two responses, this conclusory statement appears to be referring to multiple primary games each of which are preceded by a respective wager, which does not meet the limitations of the claim even if the statement were accurate (and the Office Action has presented no evidence that it is).

Accordingly, because the Office Action admits that the prior art does not teach every feature of Claim 19, the rejection should be withdrawn and the claim allowed.

Conclusion

Applicants respectfully request favorable consideration and early passage to issue of the present application. If there are any questions regarding the present application, the Examiner is invited to contact Applicants' undersigned attorney using the information provided below.

Please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, please grant a second extension of time required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

Respectfully submitted,

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